

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:4
PLR-138998-15

Date:
May 31, 2016

Re:

Legend

Decedent	=
Spouse	=
Son	=
Daughter	=
Estate	=
Trust	=
Attorney 1	=
Attorney 2	=
Year	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=

Dear :

This letter responds to your authorized representative's letter dated October 28, 2015, and subsequent correspondence, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to sever a trust pursuant to § 26.2654-1(b)(1) of the Generation-Skipping Transfer Tax Regulations and make an election under § 2652(a)(3) of the Internal Revenue Code.

Facts

Decedent died on Date 1. Spouse died on Date 2. Spouse was the initial executor of Decedent's estate. Son and Daughter are the current co-executors (Trustees) of Decedent's estate.

Decedent created Trust on Date 3. Trust was amended on Date 4. At Decedent's death, pursuant to Article III of Trust, sub-trusts were created.

Article III, Paragraph 1(a) provides for a Marital Trust. Paragraph (1)(c) further provides that the Marital Trust will be divided into two sub-trusts, Trust A and Trust C, pursuant to a formula clause. Trust C is to be funded with the portion of the Marital Trust equal to Decedent's available generation-skipping transfer (GST) tax exemption after taking into account all prior transfers and other provisions of Decedent's will and trust. The remainder of the assets are to be allocated to Trust A.

Article III, Paragraph 2, provides that during Spouse's lifetime, Spouse will receive all of the net income from Trust A and Trust C at least quarter-annually. Net income not distributed to Spouse at Spouse's death is to be paid to Spouse's estate. Trustees have the sole discretion to pay principal to Spouse for her health, education, support and maintenance.

At the date of Spouse's death, Spouse has a special power of appointment over Trust C. To the extent Spouse does not effectively exercise her power of appointment, Trust C is to be added to Trust B, a GST trust.

If Spouse allocates any of her GST exemption to Trust A, that portion is also added to Trust B. Any property to which no GST exemption is allocated is added to Trust D, which is not a GST trust.

Spouse engaged Attorney 1 to prepare the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return for Decedent's Estate. Attorney 1 prepared and timely filed the return. On Schedule M, a qualified terminable interest property (QTIP) election was made under § 2056(b)(7) with respect to all of the marital trust property. However, the return did not indicate that the Marital Trust was composed of two trusts, Trust A and Trust C, and no reverse QTIP election was made with respect to Trust C under § 2652(a)(3). Thus, none of Decedent's GST exemption was allocated to Trust C.

In an affidavit, Attorney 1 states that he prepared the Form 706, but inadvertently failed to file a Schedule R, and did not list the assets as passing to Trust A and Trust C on Schedule M. On Spouse's death in Year, Attorney 2 discovered that the Marital Trust was not severed on the Form 706, a reverse QTIP election had not been made, and

Decedent's GST exemption had not been allocated on the Form 706 filed for Decedent's Estate.

The Trustees request an extension of time under §§ 301.9100-1 and 301.9100-3 to: (i) sever the Marital Trust into two trusts, Trust A and Trust C, one to be a GST exempt trust and the other a GST nonexempt trust, as permitted under § 26.2654-1(b)(1), and (ii) make a reverse QTIP election under § 2652(a)(3) with respect to Trust C, the GST exempt trust severed from the Marital Trust.

Law and Analysis

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2056(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate is determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes or has passed from the decedent to the surviving spouse.

Section 2056(b)(7)(A) provides that, in the case of qualified terminable interest property, for purposes of § 2056(a), such property shall be treated as passing to the surviving spouse, and for purposes of § 2056(b)(1)(A), no part of such property shall be treated as passing to any person other than the surviving spouse.

Under § 2056(b)(7), a marital deduction is allowed for qualified terminable interest property (QTIP), which is defined as property: (i) which passes from the decedent; (ii) in which the surviving spouse has a qualifying income interest for life; and (iii) to which an election under § 2056(b)(7)(B)(v) applies. Section 2056(b)(7)(B)(v) provides that an election with respect to any property shall be made by the executor on the return of tax imposed by § 2001. Such an election, once made, shall be irrevocable.

Section 20.2056(b)-7(b)(2)(i) of the Estate Tax Regulations provides that, the QTIP election may relate to all or any part of property that meets the requirements of § 2056(b)(7)(B)(i), provided that any partial election must be made with respect to a fractional or percentage share of the property. The fraction or percentage may be defined by a formula.

Section 20.2056(b)-7(b)(2)(ii)(A) provides that, in general, a trust may be divided into separate trusts to reflect a partial election that has been made, or is to be made, if authorized under the governing instrument or otherwise permissible under local law. Any such division must be accomplished no later than the end of the period of estate administration. If, at the time of the filing of the estate tax return, the trust has not yet been divided, the intent to divide the trust must be unequivocally signified on the estate tax return.

Section 20.2056(b)-7(b)(4)(i) provides that, in general, the election referred to in § 2056(b)(7)(B)(i)(III) and (v) is made on the return of tax imposed by § 2001 (or § 2101). For purposes of this paragraph, the term “return of tax imposed by § 2001” means the last estate tax return filed by the executor on or before the due date of the return, including extensions or, if a timely return is not filed, the first estate tax return filed by the executor after the due date.

Section 2601 imposes a tax on every generation-skipping transfer (GST).

Section 2631(a), as in effect on Date 1, provided that, for purposes of determining the GST tax, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation) that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that once an allocation of GST exemption is made, it is irrevocable.

Under § 2632(a), any allocation by an individual of GST exemption may be made at any time on or before the date prescribed for filing the individual’s estate tax return (including extensions).

Section 2632(c), as in effect on Date 1, provided that any portion of an individual’s GST exemption which has not been allocated within the time prescribed by § 2632(a) shall be deemed to be allocated as follows - (A) first, to property which is the subject of a direct skip occurring at the individual’s death, and (B) second, to trusts with respect to which the individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after the individual’s death.

Section 26.2632-1(d)(2) of the Generation-Skipping Transfer Tax Regulations provides, in relevant part, that a decedent’s unused GST exemption is automatically allocated on the due date for filing Form 706 to the extent not otherwise allocated by the decedent’s executor on or before that date. Unused exemption is allocated pro rata (subject to the rules of § 26.2642-2(b)), on the basis of the value of the property as finally determined for estate tax purposes (chapter 11 value), first to direct skips treated as occurring at the transferor’s death. The balance, if any, of unused GST exemption is allocated pro rata (subject to the rules of § 26.2642-2(b)) on the basis of the chapter 11 value of the nonexempt portion of the trust property to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made. However, no automatic allocation of GST exemption is made to a trust that will have a new transferor with respect to the entire trust prior to the occurrence of any GST with respect to the trust.

Under § 2652(a)(1) and § 26.2652-1(a)(1), the individual with respect to whom property was last subject to federal estate or gift tax is the transferor of that property for purposes of chapter 13.

Section 2652(a)(3) provides that in the case of any trust with respect to which a deduction is allowed to the decedent under § 2056(b)(7), the estate of the decedent may elect to treat all of the property in the trust for purposes of the GST tax as if the QTIP election had not been made. This election is referred to as the “reverse QTIP election.” The consequence of a reverse QTIP election is that the decedent remains, for GST tax purposes, the transferor of the marital trust for which the election is made. As a result, the decedent’s GST exemption may be allocated to the marital trust.

Section 26.2652-2(a) provides, in part, that a “reverse” QTIP election is not effective unless it is made with respect to all of the property in the trust to which the QTIP election applies. Section 26.2652-2(b) provides that an election under § 2652(a)(3) is made on the return on which the QTIP election is made.

Section 26.2654-1(b)(1) provides, in part, that the severance of a trust that is included in the transferor’s gross estate (or created under the transferor’s will) into two or more trusts is recognized for purposes of chapter 13 if the trust is severed pursuant to a direction in the governing instrument providing that the trust is to be divided upon the death of the transferor and the terms of the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original instrument and the severance occurs prior to the date prescribed for filing the federal estate tax return (including extensions actually granted) for the estate of the transferor and the new trusts are severed on a fractional basis.

Sections 301.9100-1 through 301.9100-3 provide standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3. Requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore, Decedent's estate is granted an extension of time of 120 days from the date of this letter to file a supplemental Form 706 to sever the Marital Trust into a GST Exempt QTIP Trust and a Non GST-Exempt QTIP Trust; to make a reverse QTIP election with respect to the GST Exempt Marital Trust; and to allocate Decedent's available GST exemption to the GST Exempt QTIP Trust. The allocation will be effective as of Decedent's date of death.

The supplemental Form 706 should be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the return. A copy is enclosed for this purpose

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours,

Associate Chief Counsel
Passthroughs & Special Industries

By: Leslie H. Finlow
Leslie H. Finlow
Senior Technician Reviewer
Branch 4
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes

cc: